

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
July 24, 2015 Session

**SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 205 v.
METROPOLITAN NASHVILLE BOARD OF PUBLIC EDUCATION,
ET AL.**

**Appeal from the Chancery Court for Davidson County
No. 121025iv Claudia Bonnyman, Chancellor**

No. M2014-02158-COA-R3-CV – Filed December 21, 2015

After the director of schools notified the union that represents the school district's service workers that, in accordance with amendments to the law governing the employees of boards of education, he was rescinding the school board's labor negotiations policy, the union sought a declaratory judgment that the policy was still in effect. The trial court held that the Director did not have authority to rescind the policy and granted summary judgment to the union; the school board appeals. Holding that the amendments negated the policy at issue, we reverse the judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

RICHARD H. DINKINS, J., delivered the opinion of the court, in which ANDY D. BENNETT and W. NEAL MCBRAYER, JJ., joined.

J. Brooks Fox, Lora Barkenbus Fox, and Catherine J. Dundon, Nashville, Tennessee, for the appellant, the Metropolitan Nashville Board of Public Education, et al.

James G. Stranch, III, and Michael J. Wall, Nashville, Tennessee, for the appellee, Service Employees International Union Local 205.

OPINION

I. FACTUAL AND PROCEDURAL HISTORY

This case involves the ability of the Service Employees International Union Local 205 (“SEIU”), a labor union, to represent service employees of the Metropolitan Nashville Board of Public Education (“the Board”).

The parties agree that in July 2000, the Board adopted the Labor Negotiations Policy (“LNP”), which gave non-licensed (i.e., non-teaching) employees the right to join an employee organization; to choose exclusive representatives to meet and confer with the Director of Schools (“the Director”) on matters relating to working conditions and other terms and conditions of employment; to have their representatives enter into non-binding memorandums of understanding (“MOU”) with the Director; and to have organization dues deducted from their paychecks with their written authorization. Pursuant to the procedure set forth in the LNP, the SEIU was selected as the exclusive representative by a majority of service employees in October 2000, and the Board duly certified SEIU as the exclusive representative. SEIU thereafter entered into a series of MOU’s with the Director, the most recent of which extended from July 1, 2008, to June 30, 2011. The Director did not meet with SEIU to negotiate a new MOU to take effect after June 30, 2011; after that date he permitted employees to stop automatic withdrawal of SEIU dues from their paychecks and did not recognize SEIU as the exclusive representative of the workers.

In December 2011, the Director sent a letter to the representatives of SEIU and the United Steelworkers, the union which represented the bus drivers, advising that he “desire[d] to establish a harmonious working relationship with our support employee unions” and that “[f]or our future relationship with support employee unions to be mutually beneficial and productive, we must acknowledge the recent changes in state law.” The letter stated that, in light of these changes in the law, the Director and his executive staff had “met and voted to rescind [the LNP].” On the same day, the Director notified the members of the Board by electronic mail of his decision and attached a copy of the letter.

SEIU sent a letter to the Chairperson of the Board on January 9, 2012, filing a complaint against the Director and asking the Board to confirm the SEIU’s status as the exclusive bargaining representative of the support employees and to direct the Director to comply with the LNP. On March 12, the Chairperson responded by letter to SEIU, stating that the complaint was “without merit and should proceed no further.”¹

¹ A second letter was sent by the succeeding Chairperson in July 2013 and also affirmed the action of the Director.

SEIU filed a complaint in Davidson County Chancery Court on July 16, 2012, consisting of two counts. In count one, the complaint alleged that the LNP had been enacted by the Board pursuant to the powers granted it at Tenn. Code Ann. § 49-2-301(b)(1)(A) and (HH), the Metropolitan Charter, and “other applicable law”; that the Board had never rescinded the LNP or delegated the authority to do so; that the Director refused to recognize SEIU as the exclusive bargaining representative, refused to meet and confer with SEIU, and refused to abide by the payroll deduction section of the LNP by allowing members of SEIU to revoke their membership and stop the deduction of dues from their pay at any time of the year. Count two alleged that the meeting at which the Director and his executive staff rescinded the LNP did not comply with the Open Meetings Act.² SEIU sought a declaratory judgment that “[t]he Court should declare that the LNP remains in effect and is binding upon the Director of Schools” and “further declare that [the Director] is in violation of the LNP” and other relief, including a permanent injunction requiring the Director to comply with the LNP, and an award of damages as well as attorney’s fees and costs. The Board filed its Answer on September 4, 2012, asserting that the Director had the authority to rescind the LNP and that “due to the changes in state law and Board policy, the School System is no longer required to maintain the LNP or enter into negotiations with SEIU.”

Both parties moved for judgment on the pleadings and for summary judgment. In due course, the court granted SEIU’s motion on the pleadings in part, ruling that Tenn. Code Ann. § 49-2-301 did not give the Director the authority to abrogate the LNP and, consequently, the LNP was still in effect. On the parties’ cross motions for summary judgment on count one of the complaint, the Court granted SEIU’s motion and denied the Board’s motion, declaring that:

[The LNP] is a full-fledged policy of the Board of Education, as opposed to some lesser policy or procedure. The LNP can only be revoked by the Board of Education. The Director of Schools does not have legal authority to revoke the LNP under any statute, charter provision, or Board of Education policy reviewed by this Court. Therefore, Dr. Register did not effectively rescind the LNP. The LNP is still in effect.

The Board appeals, raising the following issue: “Did the Trial Court err in granting judgment in favor of the SEIU, determining that the LNP is still in effect and leaving open the possibility of enforcement?”³

² See Tenn. Code Ann §8-4-101 *et seq.* In the final order, the trial court held that “SEIU’s alternative claim under the Tennessee Open Meetings Act is dismissed without prejudice as moot.” As more fully hereinafter explained, we also conclude that any issue as to whether or not the meeting of the Director and his staff violated the Open Meetings Act is moot, although on a different basis than the trial court.

³ In two footnotes in its brief on appeal, the Board contends that there is no private right of action

II. STANDARD OF REVIEW

A party is entitled to summary judgment only if the “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Tenn. R. Civ. P. 56.04. The parties do not contend that there are material facts at issue which preclude a grant of summary judgment. Rather the issue presented is one of law, i.e., whether the Director had the authority under the law to rescind the LNP.

A trial court’s decision on a motion for summary judgment enjoys no presumption of correctness on appeal. *In re Estate of Davis*, 308 S.W.3d 832, 837 (Tenn. 2010); *Draper v. Westerfield*, 181 S.W.3d 283, 288 (Tenn. 2005). Rather, we review the trial court’s decision *de novo* and make a fresh determination as to whether the requirements of Rule 56 have been met. *Eskin v. Bartee*, 262 S.W.3d 727, 732 (Tenn. 2008); *Blair v. W. Town Mall*, 130 S.W.3d 761, 763 (Tenn. 2004); *Eadie v. Complete Co.*, 142 S.W.3d 288, 291 (Tenn. 2004). We must view all of the evidence in the light most favorable to the nonmoving party and resolve all factual inferences in the nonmoving party’s favor. *Martin v. Norfolk S. Ry. Co.*, 271 S.W.3d 76, 84 (Tenn. 2008).

III. ANALYSIS

Recognizing the inherent value of education, Article XI, section 12 of the Tennessee Constitution mandates that there be a system of free public schools; it vests the General Assembly with “plenary and exclusive authority to establish the makeup and structure” of the same. *Thompson v. Memphis City Sch. Bd. of Educ.*, 395 S.W.3d 616, 622 (Tenn. 2012). The system so established is codified at Tenn. Code Ann. § 49-1-101, et seq.

In 1992, the Legislature enacted the Educational Improvement Act (“EIA”), which “implemented a corporate model of governance and replaced the elected superintendent position with a director of schools, appointed by and answerable to the board.” *Lawrence Cty. Educ. Ass’n v. Lawrence Cty. Bd. of Educ.*, 244 S.W.3d 302, 310 (Tenn. 2007) (citing Tenn. Code Ann. § 49-2-301 (2002 & Supp. 2007); 1992 Tenn. Pub. Acts Ch. 535). The Board is required at § 49-2-301(b)(1) to assign to the director of schools certain duties; at issue in this case are the duties assigned with respect to the employment of personnel.

allowing SEIU to enforce an alleged violation of Board policy and that the SEIU lacks standing to seek the declaratory relief sought. The Board does not present these matters as issues for review; consequently, they will not be addressed in this opinion. *See* Tenn. R. App. P. 13(b).

Prior to amendments to Title 49 which took effect in 2011, the Director had the following powers:

(EE) Within the approved budget and consistent with existing state laws, board policies and locally negotiated agreements covering licensed personnel, employ, transfer, suspend, nonrenew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title. Nothing in this subdivision (b)(1)(EE) shall be construed to alter, diminish or supersede the Education Professional Negotiations Act, compiled in chapter 5, part 6 of this title;

(FF) All persons who are employed in a position for which no teaching license is required shall be hired on a year-to-year contract. The director shall provide a person who is employed in such a position fifteen (15) days' notice of nonrenewal of the contract before the end of the contract period[.]

Tenn. Code Ann. § 49-2-301(b)(1)(EE) (2011) (amended by 2011 Tenn. Pub. Acts, Ch. 378, § 9); Tenn. Code Ann. § 49-2-301(b)(1)(FF) (2011) (amended by 2011 Tenn. Pub. Acts, Ch. 335, § 1). In 2011, the General Assembly enacted amendments to various parts of Title 49, including the duties of the director listed in section 301(b). The amendments to the statute pertinent to this appeal read as follows:

(EE) Within the approved budget and consistent with existing state laws and board policies, employ, transfer, suspend, non-renew and dismiss all personnel, licensed or otherwise, except as provided in § 49-2-203(a)(1) and in chapter 5, part 5 of this title;

(FF) All persons who are employed in a position for which no teaching license is required shall be hired at the will of the director of schools. The local board of education shall develop a policy for dismissing such employees[.]

Tenn. Code Ann. § 49-2-301(b)(1). The practical effect of these amendments was to require the Board to assign to the Director the duty to hire, transfer, suspend, non-renew, and terminate all personnel and to remove the requirement that those decisions be made in accordance with “locally negotiated agreements covering licensed personnel.”

At the same time as the amendments to Tenn. Code Ann. § 49-2-301 were passed, the Professional Educators Collaborative Conferencing Act of 2011 was enacted in chapter 378 of the 2011 Tenn. Pub. Acts. The Act requires local school boards “to participate in collaborative conferencing with professional employees, or their designated representatives, if any, with respect to only those terms and conditions of employment

that are specified in this section”; the specified terms and conditions are salaries or wages, grievance procedures, insurance, fringe benefits, working conditions, leave, and certain payroll deductions. Tenn. Code Ann. § 49-5-608(a). The Act grants the following rights to professional employees (i.e., licensed teachers): (1) the right to self-organization, (2) to form, join, or be assisted by organizations, (3) to participate in collaborative conferencing with local boards of education through representatives of their own choosing, and (4) to engage in other concerted activities for the purpose of other mutual aid and benefit; provided, that professional employees also have the right to refrain from any or all such activities. Tenn. Code Ann. § 49-5-603. The Act also ensures that professional employees of school boards have the right to engage in collaborative conferencing “through representatives of their own choosing” and that “no professional employee, group of professional employees, or professional employee organization shall be denied the opportunity to represent themselves or groups of professional employees in discussions.” Tenn. Code Ann. § 49-5-605.

The following well-settled principles guide our interpretation and application of legislative enactments:

The leading rule governing our construction of any statute is to ascertain and give effect to the legislature’s intent. To that end, we start with an examination of the statute’s language, presuming that the legislature intended that each word be given full effect. When the import of a statute is unambiguous, we discern legislative intent “from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute’s meaning.”

Metro. Gov’t of Nashville & Davidson Cty. v. Metro. Nashville Educ. Ass’n, No. M2012-02006-COA-R3-CV, 2013 WL 4678013, at *3 (Tenn. Ct. App. Aug. 27, 2013), perm. app. denied (Dec. 10, 2013) (quoting *Myers v. AMISUB (SFH), Inc.*, 382 S.W.3d 300, 308 (Tenn. 2012) (citations omitted)). When interpreting the meaning of a statute, our review is *de novo* without deference to the lower court’s ruling. *Estate of French v. Stratford House*, 333 S.W.3d 546, 554 (Tenn. 2011).

Reading the amendments to Tenn. Code Ann. § 49-2-301 and the amendments to part 6 of chapter 5 of Title 49 *in pari materia*, the General Assembly granted the right to engage in collaborative conferencing on the terms and conditions of employment only to licensed teachers while making the employment of non-licensed personnel to be at the will of the director. In vesting sole discretion to make employment decisions pertaining to non-licensed personnel in the Director, the Legislature negated any Board policy which has the effect of removing that discretion.

One such policy is the LNP, which the parties agree was properly enacted in 2000 and implemented by the Director until 2011. The pertinent language of the policy reads as follows:

It is the policy of the Metropolitan Nashville, Davidson County Board of Public Education that its classified and non-certificated employees should have and be protected in the exercise of the right, freely and without fear of penalty or reprisal, to form, join, and assist any employee organization, or to refrain from belonging, and to choose exclusive representatives to meet and confer with the Director of Schools or his/her designee on matter relating to working conditions and other terms and conditions of employment.

The Board of Public Education recognizes that state law does not authorize the Director or his/her designee to collectively bargain with any employee or employee organization and nothing in this policy is intended to be contrary to that rule of law.

The LNP then proceeds to state the procedure for recognizing exclusive representative status, requires the Director to recognize and meet with the representatives “on matters within the Director’s jurisdiction and work in good faith to develop [MOU’s],” sets the length of the MOU’s term, provides the exclusive representative with the right to receive dues via payroll deduction, and denies the right to strike to the employees.

Much of SEIU’s argument is premised on the contention that the LNP was unaffected by the 2011 amendments. To the contrary, we conclude that LNP was abrogated by the amendments. The requirements that the Director recognize a single exclusive representative of the employees, meet with that organization’s representative to discuss the terms and conditions of service workers’ employment, and permit payroll deduction for only that organization’s dues, are not consistent with the employment at will status conferred on non-licensed personnel at Tenn. Code Ann. § 49-2-301(b)(1)(FF). After the 2011 amendments became effective, the LNP was no longer operable; the Director was not obligated to follow it, and no Board action was required to rescind it.⁴

As the Director is bound by statute to see “that the laws relating to the schools and rules of the state and the local board of education are faithfully executed,” Tenn. Code

⁴ Because rescission of the LNP was not required, any issue pertaining to the procedure by which the Director purported to rescind the LNP, specifically, SEIU’s contention that the Director and his staff violated the Open Records Act, is moot.

Ann. § 49-2-301(b)(1)(A), the Director was properly exercising the authority granted to him by law when he exercised his discretion to not follow the procedures in the LNP.⁵

IV. CONCLUSION

In light of the foregoing, we reverse the trial court's grant of summary judgment to SEIU and remand the case for any further proceedings necessary.

RICHARD H. DINKINS, JUDGE

⁵ SEIU asserts that the Board had the authority to adopt the LNP and has not rescinded it; thus, the policy is "a lawful, enforceable policy" to this day. In this regard, while the parties agree that the letters written by the Board chairpersons in 2012 and 2013 to the union representative constitute the Board's endorsement of the Director's rescission of the LNP, SEIU contends that this endorsement did not constitute an official, enacted policy of the Board and, consequently, that the LNP is still in effect. SEIU has not raised this as a separate issue, and, in light of our holding that the LNP was rendered inoperable as a result of the 2011 amendments, it is not necessary to address this contention.